

3-17-2010

## State v. Moore Augmentation Record Dckt. 36578

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# In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

WALTER E. MOORE,

Defendant-Appellant.

ORDER TO TAKE JUDICIAL NOTICE  
AND AUGMENT THE RECORD

Supreme Court Docket No. 36578-2009  
Bonner County District Court No.  
2003-905

A MOTION REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE was filed by counsel for Appellant on February 10, 2010, requesting this Court for an order taking judicial notice of the appellate record in *State v. Moore*, Supreme Court Docket No. 30096-2003. Furthermore, a MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF with attachments was filed by counsel for Appellant on February 10, 2010, requesting this Court for an order augmenting the record in the above entitled appeal with copies of the documents attached to this Motion. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE be, and hereby is, GRANTED and this Court SHALL TAKE JUDICIAL NOTICE of the Clerk's Record and Reporter's Transcript in *State v. Moore*, Supreme Court Docket No. 30096-2003. Furthermore, the exhibits previously submitted in *State v. Moore*, Supreme Court Docket No. 30096-2003, are *NOT* included in this Order to Take Judicial Notice and they will not be included unless specifically requested by the parties.

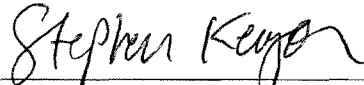
IT FURTHER IS ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, file stamped September 2, 2009; and
2. Affidavit of Walter E. Moore in Support of Defendant's Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, file stamped September 2, 2009.

DATED this 17<sup>th</sup> day of March 2010.

For the Supreme Court

**AUGMENTATION RECORD**

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER TO TAKE JUDICIAL NOTICE AND AUGMENT THE RECORD -- Docket No. 36578-2009

**ORIGINAL****BONNER COUNTY PUBLIC DEFENDER**

Isabella Robertson (ISBN: 6068)

406 South Ella Street

Sandpoint, Idaho 83864

Phone: (208) 255-7889; Fax: (208) 255-7559

STATE OF IDAHO  
COUNTY OF BONNER  
DISTRICT COURT

2009 SEP -2 P 3: 21

JUDGE SCOTT  
CLERK DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff,

V.

WALTER E. MOORE,

Defendant.

CASE NUMBER CR-03-00905

**MOTION FOR RECONSIDERATION  
OF SENTENCE PURSUANT TO  
I.C.R. 35**

COMES NOW the above-named defendant, by and through his attorney, Isabella Robertson, Bonner County Public Defender, and pursuant to Idaho Criminal Rule 35 moves this Honorable Court for reconsideration of the Amended Judgment and Sentence entered May 6, 2009, in the above-entitled matter.

On April 27, 2009, the Defendant was convicted of one count of Lewd Conduct With a Minor Under Sixteen (16) Years, a felony in violation of I.C. § 18-1508, and was sentenced to a term of imprisonment of thirteen (13) years fixed, followed by an indeterminate term of life, in the custody of the State Board of Correction. On April 27, 2009, Defendant had served six (6) years and eleven (11) days in presentence confinement.

The foregoing motion is made and based upon the Affidavit of Walter E. Moore filed herewith.

Defendant respectfully requests that the Court reconsider its Amended Judgment and Sentence entered in this matter on May 6, 2009, and reduce the determinate portion of the

Defendant's sentence to ten (10) years followed by an indeterminate sentence of ten (10) years, not to exceed twenty (20) years.

DATED this 2nd day of September, 2009.

OFFICE OF THE BONNER  
COUNTY PUBLIC DEFENDER

BY:

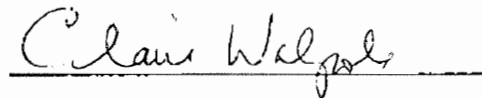


ISABELLA ROBERTSON  
PUBLIC DEFENDER

### CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox or by facsimile on the 2nd day of September, 2009, addressed to:

Philip H. Robinson  
Chief Deputy Prosecuting Attorney  
Fax: 263-6726.



**ORIGINAL****BONNER COUNTY PUBLIC DEFENDER**

Isabella Robertson (ISBN: 6068)

406 South Ella Street

Sandpoint, Idaho 83864

Phone: (208) 255-7889; Fax: (208) 255-7559

STATE OF IDAHO  
COUNTY OF BONNER  
DISTRICT

2009 SEP -2 P 3:21

JAMES SCOTT  
DISTRICT COURT**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER****STATE OF IDAHO,**

Plaintiff,

V.

**WALTER E. MOORE,**

Defendant.

**CASE NUMBER CR-03-00905****AFFIDAVIT OF WALTER E. MOORE IN  
SUPPORT OF DEFENDANT'S MOTION  
FOR RECONSIDERATION OF  
SENTENCE PURSUANT TO I.C.R. 35**

STATE OF IDAHO )

) ss.

COUNTY OF BONNER )

**WALTER E. MOORE, being first duly sworn according to law, deposes and says:**

1. I am the Defendant in the above-entitled matter and have personal knowledge of the facts set forth herein or believe the same to be true and correct.

2. On April 27, 2009, I was convicted of one count of Lewd Conduct With a Minor Under Sixteen (16) Years, a felony in violation of I.C. § 18-1508, and was sentenced to a term of imprisonment of thirteen (13) years fixed, followed by an indeterminate term of life, in the custody of the State Board of Correction. On April 27, 2009, I had served six (6) years and eleven (11) days in presentence confinement.

3. I am respectfully asking the Court to reconsider its sentence of thirteen (13) years fixed, along with an indeterminate term of life, and reduce the sentence to a fixed term of ten (10) years plus ten (10) years indeterminate, not to exceed twenty (20) years.

**AFFIDAVIT OF WALTER E. MOORE IN SUPPORT OF MOTION FOR  
RECONSIDERATION OF SENTENCE PURSUANT TO I.C.R. 35**

Page 1

4. I did not agree with the sentence Ms. Robertson asked for at my re-sentencing in that I felt it was an insult to my victim, the Court and the people. I was asking for ten (10) years fixed with ten (10) years indeterminate for a total of twenty (20) years. I make this request specifically to get into programs and counseling sooner. I have been continuously asking for help since 2003. I will not be able to get it any time soon with the way my sentence is structured now, and I would like to continue in the programs and counseling for the longest possible time before any potential release from custody.

5. As I've said many times, I take full responsibility for my actions. The day after my arrest many family and friends came to visit me. Even then I saw just how much damage I had caused. Their faces spoke more than any word could say. This in itself was enough to prevent me from causing them any future pain.

6. My desire to change is greater than you can imagine. I have caused too many people too much pain. I do not in any way want to seem uncaring for my victim and his family and my other family and friends, who have all become victims of my crime. The pain that they suffer each day is real. I will not discount what they are dealing with. I feel that in order for me to be responsible to my victims and the people of Idaho it would be in the interest of all that I get into programming and counseling, and I believe the State would also show in that way that it wants to protect society by getting all offenders into the programs best suited to prevent them from committing any other crime on release.

7. My commitment to change is real! When I offered the letters from the C.B.I. Bible study it was from men and women who have never met me or spoken to me in person. They wrote from what they saw in my answers and essays I've written. These people saw in me what I didn't see in myself. I still feel I have so much more to learn about the Bible. I do not want in any way to excuse my actions by hiding behind God. I fully believe that God tells believers to submit to law enforcement and that we will be held accountable by both man and God.

8. I am not saying that I should be let go. I do deserve to spend time in prison because of my actions. I am asking for a reduction in my fixed time so that I can get into

programs sooner. Same Solution is supposed to be a better program for men like myself. It is

only offered at ISCI from what I was told.

9. During my time of incarceration I have fulfilled two of the requirements of the

parole plan-case plan. I've held down a job for around five and one-half years, and I increased my scores in education to almost perfect.

10. The most rewarding job was as a teacher's assistant for A.B.E. 2-3 and G.E.D. It

was a joy to help these men to work toward their G.E.D. I've had the chance to both learn and

teach with fellow inmates to improve the person that I am.

11. I am also requesting a reduction of the indeterminate portion of my sentence in

that I am fearful that because of my health problems, I will die in prison before I ever have an

opportunity to be released regardless of the work I have done and will do to become a better

person.

12. I am truly hopeful that when the time comes for me to go before the Parole Board

I will be able to show them that I have been committed to positive self change during the time

that I have been incarcerated by sincerely and completely fulfilling all of the requirements for the

parole plan-case plan. I hope to be able to show them through wholehearted participation in

counseling and programming that I am a changed man who is can be trusted with a second

chance to live well and without bringing harm to others.

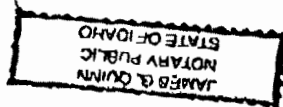
WALTER E. MOORE

SUBSCRIBED and SWORN to before me this 15<sup>th</sup> day of September, 2009.

*[Signature]*  
NOTARY PUBLIC FOR IDAHO

Residing at:

Commission Expires: 9/10/13



15:41

**CERTIFICATE OF DELIVERY**

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox or by facsimile on the 2<sup>nd</sup> day of September, 2009, addressed to:

Philip H. Robinson  
Chief Deputy Prosecuting Attorney  
Fax: 263-6726.

Clair Walpole